IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2007

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THE HONOURABLE MR. JUSTICE K.N. BASHA

Crl.O.P.No.9811 of 2006
and Crl.M.P.Nos.2548 and 2549 of 2006

Thangamani ... Petitioner

Vs

State
rep. By Muruga
The Food Inspector
city Municipal Corporation
Coimbatore ... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to quash the proceedings in C.C.No.251 of 2003 on the file of the learned Judicial Magistrate No.5, Coimbatore for alleged offences under Section 7(1) and 16(1)(a)(i) read with Sec 2(1a)(d) and (m) of the Prevention of Food Adulteration Act, 1954.

For Petitioner : Mr.R.John Sathyan

For Respondent : Mr.I.Paul Noble Devakumar
Govt.Advocate(Crl.Side)

O R D E R

Learned counsel for the petitioner submits that the petitioner has come forward with this petition seeking for the relief of quashing the proceedings in C.C.No.251 of 2003 on the file of the learned Judicial Magistrate No.5, Coimbatore for alleged offences under Section 7(1) and 16(1)(a)(i) read with Sec 2(1a)(d) and (m) of the Prevention of Food Adulteration Act, 1954.

2. Learned counsel for the petitioner submits that the petitioner has been arrayed as A2 out of three accused. It is contended by the learned counsel for the petitioner that the petitioner has been implicated in this case only on the ground of petitioner being a licensee of the canteen namely, "M/s.Lakshmi Canteen" and she has nothing to do with the day to day affairs of the canteen and she is not in-charge or business of the canteen. Learned counsel for the petitioner would also contend that the respondent failed to send notice under Form III as contemplated

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under Section 13(2) of the Prevention of Food Adulteration Act, 1954 and as such, the entire proceedings is liable to be quashed in view of the non-compliance of the mandatory requirement in the Prevention of Food Adulteration Act, 1954. Learned counsel also placed reliance on the decision rendered by the Hon'ble Apex Court in TULSI RAM VS STATE OF MADHYA PRADESH reported in AIR 1985 SC page 299 wherein, it was held that "non compliance of Provisions of Sec 13(2) vitiates the trial as it takes away the valuable right of the accused to have the sample analyzed by the Central Food Laboratory".

3. Per contra, learned Government Advocate (Criminal Side) contended that it is for the petitioner to prove that she is not in-charge and responsible for the conduct of the business at the time of full fledged trial and the petitioner cannot take such plea in the quash petition. It is also further contended by the learned Government Advocate(Criminal Side) that the respondent should be given an opportunity to establish that notice contemplated under Section 13(2) of the Act was issued to the petitioner herein at the time of full fledged trial before the learned Magistrate and as such, this quash petition is not maintainable and the same is liable to be dismissed.

4. I have carefully considered the rival contentions put forward by either side and also perused the impugned complaint filed in this case and other materials available on record.

5. The allegation of the complainant/respondent is to the effect that a sample of sunflower oil was taken from the said canteen. It does not confirm to the standards prescribed under the Prevention of Food Adulteration Act and Rules and as such the same is adulterated, thereby the accused is said to have committed the offence under Section 7(1) and 16(1)(a)(i) read with Sec 2(1a)(d) and (m) of the Prevention of Food Adulteration Act, 1954. A perusal of the complaint discloses that the petitioner has been implicated only as a licensee of the canteen namely, Lakshmi Canteen,and arrayed as A-2 out of three accused. The averments and allegations contained in the complaint makes it crystal clear that only the third accused namely T.Anandakumar is responsible and in-charge of the canteen and such averment is specifically made in the complaint itself. It is needless to state that a person cannot be implicated in a case like the instant case merely on the ground of being a licensee and there should be specific averment and allegation to the effect that such person also in-charge and responsible for the day to day affairs of the canteen.

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6. As already pointed out, the entire perusal of the materials available on record including the impugned complaint clearly shows that only the third accused is responsible and in-charge of the conduct of the business of the canteen and the petitioner, who is arrayed as A2 has been implicated in this case merely as licensee of such canteen.

7. The Hon'ble Apex Court held in MANIBAI AND ANOTHER VS THE STATE OF MAHARASHTRA reported in AIR 1974 SC page 434 that

> "For the sale of adulterated coconut oil by P, a co-license of the shop, his mother M, who was not in charge of nor was she actually conducting the business at the shop, cannot be held liable merely because she was the licensee of the shop. Even assuming that the business was owned by a firm or an association of individuals and M was a partner of the firm or a member of the association, M would not be liable for the sale under Section 17(1) as she was not in charge of, and responsible for the conduct of the business."

The above principle of law laid down by the Hon'ble Apex Court is squarely applicable to the facts of the instant case. Therefore, this court is of the considered view that the proceedings initiated against the petitioner in so far as the petitioner is concerned is liable to be quashed on this sole ground.

8. Learned counsel for the petitioner also further pointed out that the respondent Food Inspector has not complied with the mandatory requirements contemplated under Section 13(2) of the Prevention of Food Adulteration Act, 1954 by sending notice under Form III to the petitioner herein and as such even on this ground, the compliant is liable to be quashed. Learned counsel for the petitioner also placed reliance on the decision of the Hon'ble Apex Court in TULSI RAM VS STATE OF MADHYA PRADESH reported in AIR 1985 SC 299.

9 The Honourable Apex Court in the decision cited supra has categorically held that "non compliance of Provisions of Sec 13(2) vitiates the trial as it takes away the valuable right of the accused to have the sample analyzed by the Central Food Laboratory. "

10 In view of the above findings, this Court is constrained to quash the proceedings in so far as the petitioner is concerned pending in C.C.No.251 of 2003 on the file of the learned Judicial Magistrate No.5, Coimbatore. As the case itself relates to the year 2003, the learned Judicial Magistrate No.5, Coimbatore is directed to expedite the trial as expeditiously as possible and

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complete the same within a period of six months from the date of receipt of copy of this order.

With the above direction, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

nvsri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate,
No.5, Coimbatore.

2. Do Through The Chief Judicial Magistrate,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr. R. Johes Sathyam, Advocate SR 63969

VSV(CO)
SR/7.11.2007

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